

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Emily Devaney	Team: Squad #1	CCRB Case #: 201902135	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 03/09/2019 5:00 AM	Location of Incident: Linden Boulevard and Schenck Avenue	Precinct: 75	18 Mo. SOL 9/9/2020	EO SOL 4/26/2021	
Date/Time CV Reported Sat, 03/09/2019 6:39 AM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Sat, 03/09/2019 6:39 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Anthony Waite	09649	961434	075 PCT
2. SSA Robert Martinez	01369	922716	075 PCT
3. POM Andre Ohara	09483	961031	075 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Ramil Casimir	11100	950170	075 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SSA Robert Martinez	Abuse: Sergeant Robert Martinez questioned § 87(2)(b)	
B.SSA Robert Martinez	Abuse: Sergeant Robert Martinez interfered with § 87(2)(b)'s use of a recording device.	
C.SSA Robert Martinez	Abuse: Sergeant Robert Martinez frisked § 87(2)(b)	
D.POM Anthony Waite	Abuse: Police Officer Anthony Waite interfered with an individual's use of a recording device.	
E.POM Andre Ohara	Abuse: Police Officer Andre Ohara interfered with an individual's use of a recording device.	
F.POM Anthony Waite	Force: Police Officer Anthony Waite used physical force against an individual.	
G.POM Anthony Waite	Abuse: Police Officer Anthony Waite frisked an individual.	
H.POM Anthony Waite	Abuse: Police Officer Anthony Waite threatened to arrest an individual.	
I.POM Anthony Waite	Abuse: Police Officer Anthony Waite searched an individual.	
J.POM Anthony Waite	Abuse: Police Officer Anthony Waite searched the vehicle in which § 87(2)(b) was an occupant.	

### Case Summary

On March 9, 2019, § 87(2)(b) filed this complaint on the CCRB's call processing system.

On March 9, 2019, at approximately 5:00 a.m., § 87(2)(b) parked his car in a crosswalk and picked up a friend from a nightclub. § 87(2)(b) drove away and Sergeant Robert Martinez, Police Officer Anthony Waite, and Police Officer Andre O'Hara, all from the 75<sup>th</sup> Precinct, pulled him over at Linden Boulevard and Schenck Avenue in Brooklyn. Sgt. Martinez asked § 87(2)(b) if he had any guns in the car, told § 87(2)(b) to put his phone down, and frisked § 87(2)(b) (**Allegations A-C: Abuse of Authority, § 87(2)(g)**). PO Waite and PO O'Hara told § 87(2)(b)'s unidentified friend to put his phone down (**Allegations D-E: Abuse of Authority, § 87(2)(g)**). PO Waite pushed the individual against the car (**Allegation F: Force, § 87(2)(g)**). PO Waite frisked and threatened to arrest the individual (**Allegation G-H: Abuse of Authority, § 87(2)(g)**). PO Waite searched the individual (**Allegations I: Abuse of Authority, § 87(2)(g)**). PO Waite searched § 87(2)(b)'s car (**Allegation J: Abuse of Authority, § 87(2)(g)**). PO Waite issued § 87(2)(b) a summons for parking in a crosswalk, and all parties drove away.

There is body-worn camera (BWC) footage from all officers, including witness Police Officer Ramil Casimir from the 75<sup>th</sup> Precinct (Board Review 01-06). § 87(2)(b) provided footage from the dash camera in his car (Board Review 07).

### Findings and Recommendations

**Allegation (A) Abuse of Authority: Sergeant Robert Martinez questioned § 87(2)(b)**  
**Allegation (B) Abuse of Authority: Sergeant Robert Martinez interfered with § 87(2)(b)'s use of a recording device.**  
**Allegation (C) Abuse of Authority: Sergeant Robert Martinez frisked § 87(2)(b)**  
It is undisputed that PO Waite, PO O'Hara, and Sgt. Martinez pulled over § 87(2)(b)'s car and issued § 87(2)(b) a summons for parking in a crosswalk.

§ 87(2)(b) testified that his friend, who § 87(2)(b) refused to identify, brought a liquor bottle into the car (Board Review 08-10). When the officers pulled him over, § 87(2)(b) asked the individual what he was going to do with the liquor bottle, and the individual put it on the floor. Sgt. Martinez approached the car and said that § 87(2)(b) was stopped because he was parked in the crosswalk. Then Sgt. Martinez asked § 87(2)(b) if he had any guns in the car. § 87(2)(b) asked how Sgt. Martinez arrived at that line of questioning during a routine traffic stop. Sgt. Martinez told § 87(2)(b) to step out of the car, which he did. Sgt. Martinez frisked § 87(2)(b)'s jacket and pants pockets. Sgt. Martinez informed § 87(2)(b) that he was recording on his body-worn camera. § 87(2)(b) said that he was recording also. Sgt. Martinez told § 87(2)(b) that he was not allowed to record because § 87(2)(b) was a participant in the stop.

Sgt. Martinez's body-worn camera footage showed that Sgt. Martinez told § 87(2)(b) "Put your phone down," beginning at the 3:50 minute-mark of the player's timestamp (Board Review 01). Sgt. Martinez frisked § 87(2)(b) after § 87(2)(b) put his phone away, at the 4:25 minute-mark.

On January 9, 2020, the NYPD's Department Advocate's Office (DAO) confirmed that Sgt. Martinez retired on December 1, 2019 (Board Review 11).

§ 87(2)(g)

**Allegation (D): Abuse of Authority: Police Officer Anthony Waite interfered with an individual's use of a recording device.**

**Allegation (E): Abuse of Authority: Police Officer Andre O'Hara interfered with an individual's use of a recording device.**

§ 87(2)(b) testified that when he was pulled over, his passenger placed a bottle of alcohol, that he was holding, onto the floor. While § 87(2)(b) was interacting with Sgt. Martinez, the individual was attempting to record the encounter on his cell phone (Board Review 08-10). PO Waite grabbed the phone from the individual and threw it on the ground. § 87(2)(b) stated that neither he nor his friend had been smoking marijuana in the vehicle or prior to this incident. § 87(2)(b) refused to identify the individual for the investigation. The investigation was unable to identify or obtain a statement from the individual.

PO Waite testified that he immediately detected the odor of marijuana emanating from inside the vehicle when he approached on the passenger side (Board Review 12). PO Waite saw that the individual in the front passenger seat had a large bulge under his jacket near his waistband. The bulge was about two or three inches long and resembled the barrel of a gun. PO Waite asked the individual to step out of the vehicle, but the individual did not comply. The individual took out his cell phone, and PO Waite saw that he was trying to text or call someone. PO Waite asked the individual to put his phone down. PO Waite wanted the individual to put his phone down because PO Waite did not want the individual to inform others about this encounter in case others arrived at the scene. PO Waite stated during his interview that he had experiences in which the subjects of stops call other people to the scene which escalates the situation.

§ 87(2)(b)'s dashboard camera video showed that the individual told PO Waite that he was checking his text messages, at the 1:22 minute-mark of the player's timestamp (Board Review 07).

PO O'Hara testified that he did not know what the individual was doing with his phone at the time, but he echoed PO Waite who told the individual to put down his phone (Board Review 13). PO O'Hara stated during his interview that he typically does not like when subjects of a stop have their phones in their hands in case they use the phone as a weapon.

Sgt. Martinez's BWC video captured him ask, at 2:05 of the video, "why were you moving around when we pulled up; what were you reaching for (Board Review 01)?" PO Waite's and PO O'Hara's BWC videos showed that PO Waite told the individual to stay off his phone five times, as shown between the 2:52 and 4:50 minute-marks of his body-worn camera video (Board Review 03). PO O'Hara told the individual to put his phone down twice, beginning at the 5:00 minute-mark of his body-worn camera video (Board Review 05). The individual did not comply.

According to NYPD Patrol Guide Procedure 203-29, individuals have a right to lawfully record police activity, but this right can be limited for the safety of officers or when the individual videotaping has committed a violation of law (Board Review 14).

§ 87(2)(g)

**Allegation (F): Force: Police Officer Anthony Waite used physical force against an individual.**

**Allegation (H): Abuse of Authority: Police Officer Anthony Waite threatened to arrest an individual.**

§ 87(2)(b) testified that PO Waite removed the individual from the passenger seat and pushed the individual forcefully against the car (Board Review 08-10). PO Waite put his hands in the

individual's pockets (see analysis of Allegations G and I below).

PO Waite's and PO O'Hara's body-worn camera videos captured the interaction (Board Review 03-05). Between the 4:19 and 4:49 minute-marks of PO Waite's BWC video, PO Waite asked the individual to step out of the car multiple times, and the individual did not comply (Board Review 03). At the 4:50 minute-mark, PO Waite grasped the individual by the arm and removed him from the vehicle. PO Waite begins to frisk the individual who pushes away from PO Waite. At the 5:28 minute-mark, PO Waite told the individual, "If you're not going to allow me to frisk you, I'm going to have to put you in handcuffs." PO Waite turned the individual around and pushed the individual against the car. PO Waite pushed the individual once and seemingly without much force.

PO Waite testified that he asked the individual multiple times to exit the car, but the individual did not comply (Board Review 12). The individual got out of the car when PO Waite grasped the individual's arm. As the individual stood, a bottle of Hennessy fell from underneath his jacket. PO Waite began to frisk the individual who then pushed away from PO Waite and tensed his arms. PO Waite told the passenger to stop resisting or else he would be placed in handcuffs. PO Waite meant that the individual would be arrested. At the time, the individual was committing obstructing governmental administration (OGA), disorderly conduct, and consuming alcohol in public (open container). PO Waite pushed the individual against the car to stop him from resisting.

According to NYPD Patrol Guide 221-01, force may be used when it is reasonable to ensure the safety of officers or to place an individual in custody (Board Review 23). Factors to consider when determining reasonableness include actions taken by the subject, duration of the action, and whether the subject is resisting custody.

§ 87(2)(g)

A person is guilty of obstructing governmental administration when he intentionally attempts to prevent a public servant from performing an official function by means of physical force or interference, New York Penal Law §195.05 (Board Review 15).

§ 87(2)(g)

**Allegation (G): Abuse of Authority: Police Officer Anthony Waite frisked an individual.**  
**Allegation (I): Abuse of Authority: Police Officer Anthony Waite searched an individual.**  
**Allegation (J): Abuse of Authority: Police Officer Anthony Waite searched the vehicle in which § 87(2)(b) was an occupant.**

§ 87(2)(b) testified that PO Waite frisked and searched the individual by putting his hands in the individual's pockets (Board Review 08-10). Then PO O'Hara searched the front seats of the vehicle. § 87(2)(b) heard PO O'Hara open and close the glove compartment and center console. PO O'Hara looked in the rear seats of the vehicle. PO O'Hara did not find anything.

The body-worn camera videos showed that PO Waite frisked the individual (Board Review 01-06). It is unclear whether PO Waite entered the individual's pockets, although the individual asks why PO Waite is inside his pockets. PO Waite finished frisking the individual and then told him to stand

at the rear of the car. The videos identified PO Waite as the officer who searched § 87(2)(b)'s car. PO Waite first entered the front passenger area of the vehicle. PO Waite opened the glove compartment and center console. PO Waite entered the driver's area next, and then the rear passenger seat. PO Waite did not appear to recover anything from the search. At the 6:15 minute-mark of Sgt. Martinez's body-worn camera video, Sgt. Martinez remarked that the individual smelled like weed (Board Review 01). The individual replied that he was smoking weed in the nightclub prior to this incident.

PO Waite and PO O'Hara both testified that they smelled the odor of marijuana immediately upon approaching the vehicle (Board Review 12-13). PO Waite and PO O'Hara identified the odor as emanating from inside the vehicle. Both officers cited making numerous arrests involving the possession of marijuana.

PO Waite testified that he frisked the individual by patting the individual's arms, chest, waist, and legs (Board Review 12). PO Waite frisked the individual to be sure the individual did not have any weapons that could harm him. PO Waite denied entering the individual's pockets. PO Waite searched the vehicle because of the aforementioned contraband and the odor of marijuana. PO Waite did not recover anything from the search.

PO Waite and PO O'Hara prepared stop reports that were consistent with their testimony (Board Review 22).

Based on the officers' testimony and the individual's admission of smoking marijuana, as captured on body-worn camera video, the investigation determined that there was an odor of marijuana present in the vehicle at the time of incident.

The odor of marijuana emanating from an automobile provides sufficient probable cause for officers to search a vehicle and its occupants, People v. Chestnut, 43 A.D.2d 260 (Board Review 16).

§ 87(2)(g)

#### **Civilian and Officer CCRB Histories**

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review 17).
- PO Anthony Waite has been a member of service for four years and has been a subject in 11 CCRB complaints and 38 allegations, none of which were substantiated (Board Review 18). § 87(2)(g)
- PO Andre O'Hara has been a member of service for four years and has been a subject in eight CCRB complaints and 17 allegations, none of which were substantiated (Board Review 19). § 87(2)(g)

#### **Mediation, Civil and Criminal Histories**

- § 87(2)(b) declined to mediate this complaint.
- As of September 11, 2019, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regard to this complaint (Board Review 20).

- § 87(2)(b) [Redacted]

Squad No.: \_\_\_\_\_

Investigator: \_\_\_\_\_  
Signature Print Title & Name Date

Squad Leader: Mgr. Joy Almeyda 5.28.20  
Signature Print Title & Name Date

Reviewer: \_\_\_\_\_  
Signature Print Title & Name Date